

**Maytal Construction Corp. and Maytal Construction Corp., Debtor-in-Possession and Local 580, International Association of Bridge, Structural and Ornamental Iron Workers. Case 29-CA-16396,**

April 8, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on March 9, 1992, and amended on April 7, 1992, the General Counsel of the National Labor Relations Board issued a complaint against Respondents, Maytal Construction Corp. and Maytal Construction Corp. as Debtor-in-Possession, alleging that they violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondents have failed to file an answer.

On March 11, 1993, the General Counsel filed a Motion for Summary Judgment. On March 15, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the Complaint shall be deemed to be admitted . . . to be true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated December 22, 1992, counsel for the General Counsel notified the Respondents that unless an answer was received by the close of business January 12, 1993, a Motion for Summary Judgment would be filed. To date, no answer has been filed by the Respondents.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent Maytal, a New York corporation with an office and place of business located at 505 Main Street in the town of Westbury in Nassau County, New York, has been engaged as a general contractor in the construction industry doing residential, commercial, industrial, and office construction. During the calendar year ending December 31, 1991, a representative period, Respondent Maytal, in the course and conduct of its business, purchased and received at its Westbury facility products, goods, and materials valued in excess of \$50,000 directly from businesses located outside the State of New York.

Since on or about February 25, 1992, and pursuant to a voluntary chapter 11 bankruptcy petition filed in the United States District Court for the Eastern District of New York, Respondent Maytal as Debtor-in-Possession has had full authority to continue the operations of Maytal Construction Corp. and to exercise all powers necessary to administer the business and, at all material times, has been a successor in bankruptcy to Respondent Maytal. We find that the Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

On or about December 18, 1991, Respondent Maytal recognized the Union as the exclusive collective-bargaining representative of its employees in an appropriate bargaining unit, and agreed to enter into a collective-bargaining agreement covering the employees for the period July 1, 1990, through June 30, 1993, without regard to whether the Union had attained majority status under the provisions of Section 9 of the Act.<sup>1</sup> By virtue of Section 9(a) of the Act, the Union, for the period from July 1, 1990, through June 30, 1993, has been and will continue to be the limited exclusive collective-bargaining representative of the Respondents' employees in the following appropriate unit:

All employees of Maytal Construction Corp. and Maytal Construction Corp. as debtor-in-possession who perform the type of work set forth in Section

<sup>1</sup>In view of the allegation that the Respondent Maytal is engaged in the building and construction industry, and that it recognized the Union without regard to whether the Union had attained majority status under Sec. 9(a), we find that the bargaining relationship entered into between the parties was established pursuant to Sec. 8(f) of the Act, and that the Union is the limited exclusive representative of the Respondent's unit employees. See *John Deklewa & Sons*, 282 NLRB 1375, 1386-1387 (1987), *enfd. sub nom. Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988).

V of the July 1, 1990 through June 30, 1993, collective bargaining agreement between the Union and the Allied Building Metal Industries, Inc.

On or about December 18, 1991, Respondent Maytal and the Union reached complete agreement regarding the unit employees' terms and conditions of employment to be incorporated into the collective-bargaining agreement. Respondent Maytal's president, Benny Riven, and its general manager, Charles Lococco, agreed to execute the agreement and to implement its terms.<sup>2</sup>

Since on or about December 18, 1991, the Union has requested that Respondents execute a written contract containing the above agreement but, since on or about December 19, 1991, the Respondents have failed and refused to do so. We find that by engaging in the above conduct, the Respondents have interfered with, restrained, and coerced, and are interfering with, restraining, and coercing their employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act, and have failed and refused, and are failing and refusing, to bargain collectively with the Union as the bargaining representative of their employees, in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing to execute a written contract containing the agreed-upon terms and conditions of employment for unit employees, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist, and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondents to execute a written contract with the Union containing all the terms and conditions of employment for unit employees that were agreed to on or about December 18, 1991, to give retroactive effect to that agreement from December 18, 1991, to date, and to make unit employees whole for any loss of pay or expenses incurred as a result of the Respondents' failure and refusal to execute and implement the written agreement, in the manner prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), and as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest on such amounts to be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

<sup>2</sup> The complaint alleges, and we find, that Riven and Lococco are supervisors within the meaning of Sec. 2(11) of the Act.

#### ORDER

The National Labor Relations Board orders that the Respondents, Maytal Construction Corp. and Maytal Construction Corp. as Debtor-in-Possession, Westbury, New York, their officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, and from failing and refusing to bargain collectively with Local 580, International Association of Bridge, Structural and Ornamental Iron Workers, which is the limited exclusive bargaining representative of the Respondents' employees in an appropriate unit, by failing and refusing to execute a written contract containing agreed-upon terms and conditions of employment for unit employees. The appropriate bargaining unit consists of:

All employees of Maytal Construction Corp. and Maytal Construction Corp. as debtor-in-possession who perform the type of work set forth in Section V of the July 1, 1990 through June 30, 1993, collective bargaining agreement between the Union and the Allied Building Metal Industries, Inc.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

##### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute and implement a written contract with the Union containing the terms and conditions of employment for unit employees that were agreed to on or about December 18, 1991, give retroactive effect to that agreement from December 18, 1991, to date, and make whole unit employees for any loss of backpay or expenses incurred as a result of the Respondents' failure and refusal to execute a written contract, with interest as described in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all others records necessary to analyze the amounts due under the terms of this Order.

(c) Post at their facility in Westbury, New York, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act, and WE WILL NOT fail and refuse to bargain collectively with Local 580, International Association of Bridge, Structural and Ornamental Iron Workers, which is the limited exclusive collective-bargaining representative of our employees in an appropriate unit, by failing and refusing to exe-

cute a written contract with the Union containing agreed-upon terms and conditions of employment for employees in the unit. The appropriate bargaining unit consists of:

All employees of Maytal Construction Corp. and Maytal Construction Corp. as debtor-in-possession who perform the type of work set forth in Section V of the July 1, 1990 through June 30, 1993, collective bargaining agreement between the Union and the Allied Building Metal Industries, Inc.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL execute a written contract with the Union containing the unit employees' terms and conditions of employment that were agreed to with the Union on or about December 18, 1991, WE WILL give retroactive effect to that agreement from December 18, 1991, to date, and we will make whole unit employees for any loss of pay or expenses incurred as a result of our failure and refusal to execute and implement the written contract, with interest.

MAYTAL CONSTRUCTION CORP. AND  
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DEBTOR-IN-POSSESSION